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HUMAN RIGHTS COMMITTEE
Seventy-fifth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

VIET NAM

1. The Committee considered the second periodic report of Viet Nam (CCPR/C/VNM/2001/2) at its 2019th, 2020th and 2021st meetings (CCPR/C/SR.2019-2021), held on 11 and 12 July 2002, and adopted the following concluding observations at its 2031st meeting (CCPR/C/SR.2031), held on 19 July 2002.

A. Introduction

2. The Committee welcomes Viet Nam's second periodic report, which contains detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the discussion with the State party. The Committee welcomes the State party's decision to send a strong delegation from its capital, composed of representatives of various government authorities, for the examination of the report. The Committee regrets, however, the considerable delay in the submission of the report which was due in 1991. It also regrets the lack of information on the human rights situation in practice, as well as the absence of facts and data on the implementation of the Covenant. As a result, a number of credible and substantiated allegations of violations of Covenant provisions which have been brought to the attention of the Committee could not be addressed effectively and the Committee found it difficult to determine whether individuals in the State party's territory and subject to its jurisdiction fully and effectively enjoy their fundamental rights under the Covenant.

B. Positive aspects

3. In this regard, the Committee has noted developments within the State party that reflect some relaxation of the political restraints that have raised serious questions of gross violations of rights protected by the Covenant.

4 The Committee takes note of the efforts which are being made by the State party to reform its domestic legal order, to comply with its international, in particular human rights, commitments.

C Principal areas of concern and recommendations

5. The Committee is concerned about the status under domestic law of the rights provided for in the Covenant, which remains unclear. It is also concerned that certain constitutional provisions would appear to be incompatible with the Covenant and that the Vietnamese Constitution does not enumerate all Covenant rights, nor the extent to which they may be limited and the criteria used. The Committee is concerned that according to Vietnamese law the Covenant rights must be interpreted in a way that may compromise the enjoyment of these rights by all individuals.

The State party should guarantee the effective protection of all rights enshrined in the Covenant and ensure that they are fully respected and enjoyed by all (art. 2).

6. The Committee is concerned about the statement of the delegation that because persons under the jurisdiction of the State party have recourse to national mechanisms, the State party does not need to accede to the Optional Protocol.

The State party should consider acceding to the Optional Protocol in order to enhance the protection of human rights afforded to persons under its jurisdiction.

7. Notwithstanding the reduction in the number of crimes that carry the death penalty from 44 to 29, the Committee remains concerned about the large number of crimes for which the death penalty may still be imposed. The penalty does not appear to be restricted only to those crimes that are considered as the most serious ones. In this respect, the Committee considers that the definition of certain acts such as opposition to order and national security violations, for which the death penalty may be imposed, are excessively vague and are inconsistent with article 6, paragraph 2, of the Covenant.

The State party should continue to review the list of crimes for which the death penalty may be imposed in order to reduce and limit these to crimes which may be strictly considered as the most serious crimes, as required by article 6, paragraph 2, and with a view to abolishing capital punishment in furtherance of article 6 of the Covenant.

8. Notwithstanding the information provided by the delegation that only three persons were currently subject to administrative detention, referred to as probation by the delegation, the Committee remains concerned about the continued use of this practice as prescribed under decree CP-31, since it provides for persons to be kept under house arrest for up to two years

without the intervention of a judge or a judicial officer. The Committee is equally concerned at the provisions of article 71 of the Code of Criminal Procedure, pursuant to which the Principal Prosecutor may prolong the duration of the preventive detention of an individual without time limits, "if required and for serious offences against national security".

The State party should ensure that no persons are subjected to arbitrary restriction of their liberty and that all persons deprived of their liberty are promptly brought before a judge or other officer authorized to exercise judicial power by law, and that they can only be deprived of their liberty on the basis of a judgement based on law, as required by article 9, paragraphs 3 and 4, of the Covenant.

9. The Committee is concerned that the judicial system remains weak owing to the scarcity of qualified, professionally trained lawyers, lack of resources for the judiciary and its susceptibility to political pressure. The Committee is also concerned that the Supreme People's Court is not independent of government influence. It is further concerned that the judiciary seeks the opinion of the National Assembly's Standing Committee in regard to the interpretation of laws and that the Standing Committee is responsible for setting criteria and instructions which are binding for the judiciary.

In order to implement article 14 of the Covenant, the State party should take effective measures to strengthen the judiciary and to guarantee its independence, and ensure that all allegations of undue pressure on the judiciary are dealt with promptly.

10. The Committee is concerned about the procedures for the selection of judges as well as their lack of security of tenure (appointments of only four years), combined with the possibility, provided by law, of taking disciplinary measures against judges because of errors in judicial decisions. These circumstances expose judges to political pressure and jeopardize their independence and impartiality.

The State party should enact procedures to be applied in appointing and assigning judges in order to safeguard and ensure the independence and impartiality of the judiciary in line with article 14 of the Covenant. It must ensure that judges may not be removed from their posts unless they are found guilty by an independent tribunal of inappropriate conduct.

11. The Committee is concerned that the State party has not yet established an independent, legally constituted body with power to oversee and investigate complaints of human rights violations, including complaints against members of the police and the security services and prison guards. This fact may account for the small number of recorded complaints, in contrast to the information about large numbers of violations received from non-governmental sources (arts. 2, 7 and 10).

The State party should establish, by legislation, a permanent independent human rights monitoring body with adequate powers and resources to receive and investigate allegations of torture or other abuses of power by public officials, including members of the security services, and to initiate criminal and disciplinary proceedings against those found responsible.

12. The Committee regrets the lack of precise information provided by the delegation with respect to the number and location of all the detention centres or institutions in which persons are held against their will, and the conditions under which such persons are held (art. 10).

> The State party should provide information in respect of all the institutions in which persons are held against their will, the number and names of the institutions and the number of inmates in each and whether these are remand or convicted prisoners.

13. The Committee is concerned that the legal right of detainees to access to counsel, medical advice and members of the family is not always respected in practice.

> The State party should ensure scrupulous respect for these rights by its law enforcement agencies, the procuracy and the judiciary.

14. The Committee is concerned that the State party asserts that domestic violence against women is a new phenomenon and that, although some efforts have been made, there is no comprehensive approach to preventing and eliminating it and punishing the perpetrator (arts. 3, 7, 9 and 26).

> The State party should assess the impact of measures already taken to address the incidence of domestic violence against women. It should strengthen and improve the effectiveness of legislation, policies and programmes aimed at combating such violence. The State party should further implement training and sensitization programmes for the judiciary, law enforcement officials and members of the legal profession, as well as awareness-raising measures, to ensure zero tolerance in society of violence against women.

15. The Committee is concerned that the State party has not undertaken adequate measures to help women prevent unwanted pregnancies and to ensure that they do not undergo life-threatening abortions (art. 6).

> The State party should take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life-threatening abortions, and adopt appropriate family planning programmes to this effect.

16. The Committee notes that the information provided by the delegation was insufficient for the Committee to have a clear view of the situation in Viet Nam with regard to religious freedom. In the light of information available to the Committee that certain religious practices are repressed or strongly discouraged in Viet Nam, the Committee is seriously concerned that the State party's practice in this respect does not meet the requirements of article 18 of the Covenant. The Committee is deeply concerned by allegations of harassment and detention of religious leaders and regrets that the delegation failed to provide information relating to such allegations. In this context, the Committee is concerned at the restrictions placed on outside observers who wished to investigate the allegations.

The State party is requested to provide the Committee with up-to-date information about the number of individuals belonging to various religious communities and the number of places of worship, as well as the practical measures taken by the authorities to guarantee the freedom of exercise of religious practice.

17. The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

18. The Committee is concerned at reports of the extensive limitations on the right to freedom of expression in the media and the fact that the Press Law does not allow the existence of privately owned media. It is also concerned at the press laws which impose restrictions on publications which, inter alia, are said to cause harm to political stability or insult national institutions. These broadly defined offences are incompatible with paragraph 3 of article 19 of the Covenant.

The State party should take all necessary measures to put an end to direct and indirect restrictions on freedom of expression. The press laws should be brought into compliance with article 19 of the Covenant.

19. While noting that the State party denies any violation of the Covenant rights in this respect, the Committee remains concerned at the abundance of information regarding the treatment of the Degar (Montagnard) indicating serious violations of articles 7 and 27 of the Covenant. The Committee is concerned at the lack of specific information concerning indigenous peoples, especially the Degar (Montagnard), and about measures taken to ensure that their rights under article 27 to enjoy their cultural traditions, including their religion and language, as well as to carry out their agricultural activities, are respected.

The State party should take immediate measures to ensure that the rights of members of indigenous communities are respected. Non-governmental organizations and other human rights monitors should be granted access to the central highlands.

20. While noting the explanations provided by the delegation regarding the exercise of the right to freedom of association, the Committee is concerned at the absence of specific legislation on political parties and at the fact that only the Communist Party is permitted. The Committee is concerned at reported obstacles imposed on the registration and free operation of non-governmental human rights organizations and political parties (arts. 19, 22 and 25). It is especially concerned about obstacles placed in the path of national and international non-governmental organizations and special rapporteurs whose task it is to investigate allegations of human rights violations in the territory of the State party.

The State party should take all the necessary steps to enable national and international non-governmental human rights organizations and political parties to function without hindrance.

21. The Committee is concerned about the restrictions on public meetings and demonstrations (art. 25).

> The State party should provide additional information on the conditions for public assemblies and, in particular, to indicate whether and under what conditions the holding of a public assembly can be prohibited and whether such measures can be appealed.

22. The State party should make public the present examination of its second periodic report by the Committee, the written answers it has provided in responding to the list of issues drawn up by the Committee and, in particular, these concluding observations.

23. The State party is requested, pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, to forward information within 12 months on the implementation of the Committee's recommendations regarding paragraphs 7, 12, 14, 16, 19 and 21 above. The Committee requests that information concerning the remainder of the recommendations be included in the third periodic report, to be submitted by 1 August 2004.

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VIET NAM

Addendum

Comments by the Government of Viet Nam on the concluding observations of the Human Rights Committee

1. The Government of Viet Nam wishes to reaffirm that it has always paid special attention to the realization and protection of all the rights contained in the Covenant. This has been proved not only by our heroic struggle against the deprivation of our people of all the fundamental civil and political rights by foreign aggressors in the past, but also by our tremendous efforts during the last two decades to realize such rights in every aspect of our people's life.

2. Regarding paragraph 2, the words "credible and substantiated" (line 9) should be deleted to reflect the Committee's objective attitude relating to information received. Paragraph 3 is not a "positive" statement, but in fact a distorted and irresponsible observation. This observation offers a biased picture of the situation, in clear disregard of the reality and the achievements recorded by the people and Government of Viet Nam in relation to the implementation of the rights contained in the Covenant.

3. In paragraph 4, the Committee "takes note" of the efforts by Viet Nam "to reform its domestic legal order", which is insufficient to underline our tremendous efforts, commended by the world during the last decades, in establishing a comprehensive legal framework for the protection of the civil and political rights of individuals in Viet Nam; more than 13,000 legal acts have been promulgated. Many similar positive aspects compared to other countries' cases are unfortunately also not reflected.

4. Despite the Committee's explanation that its questions and observations are not of critical nature, in our view the Committee's approach to human rights issues and consideration of country reports should be reviewed to achieve its mandated objectives to promote constructive dialogue and to bring into effect the stringent implementation of the Covenant's rights by States parties. The Committee members should refrain conscientiously from taking position in regard to biased information or distorted allegations they have received. Besides the attitude reflected in the above observations, another example can be cited in regard to paragraph 19 where the word "Degar" is officially used (our delegation has already clearly pointed out that there is no such minority in View Nam, and that this term is only used by a group claiming to have been recruited by the Central Intelligence Agency during the Viet Nam war and now based in Colorado, United States of America, to continue to disseminate fallacies against our country). This is indeed not in conformity with the Committee's mandate. Human rights protection should also be examined in close consideration of the economic and social progress in each country, and in full recognition of the right to development of developing countries.

5. Regarding the observation in paragraph 5, our Constitution as well as other basic laws clearly specify that the State should guarantee effective protection of all rights enshrined in the Covenant, and that those rights are respected and enjoyed by all.

6. The observation in paragraph 6 presents a wrong interpretation of our delegation's statement. Accession to the Optional Protocol is the discretionary right of a State party, and Viet Nam will be considering its accession in due course.

7. Paragraph 8 contains a misleading observation with regard to the essence of Decree 31/CP and a wrong interpretation of article 71 of the Code of Criminal Procedures: in no case may the Principal Prosecutor prolong the duration of preventive detention without time limits; even in extremely serious cases, the maximum duration is limited to 16 months in total.

8. As for paragraph 9, the relative lack of professionally trained lawyers in the country does not by any means relate directly to their susceptibility to political pressure and the independence of the court system. The observation in this paragraph is perceived as a prejudicial conclusion against developing countries. The same conclusion is applied to the observation in paragraph 10.

9. As regards paragraphs 11 and 12, these are not obligations required by the Covenant.

10. The observation in paragraph 13 is not accurate. The legal right of detainees to access to counsel and medical advice and members of the family is always respected.

11. With regard to paragraph 15, our country has undertaken all possible measures to help women prevent unwanted pregnancies and to provide almost free of charge other appropriate family planning methods to this effect. In fact, Viet Nam has received an award from the United Nations Population Fund for its efforts.

12. With regard to paragraph 16 of the Committee's observations, our delegation has unequivocally responded to the Committee that all religious practices are free in Viet Nam, and on the two cases related to religious organizations raised by the Committee, we have also pointed our clearly that they are not Vietnamese religious organizations but are all established in the United States and claimed to be legitimate religious organizations in Viet Nam. This is not normal. The up-to-date information on numbers of individuals belonging to various religious communities and the number of places of worship, can be found in our addendum to the second periodic report.

13. In regard to paragraph 18, all the restrictions in our law on the right to freedom of expression in the media and on publication are similar to other countries' practice. We do allow privately owned media, but on the basis of a private entity other than an individual in accordance with the law on private enterprise. One can see among the 600 newspapers and magazines in existence at present only 150 Government-owned newspapers compared to 450 which are non-governmental, including many foreign privately owned ones.

14. As to paragraph 20, our Government would like to express its serious reservation as to the Committee's approach which is contrary to the right to self-determination and freedom of choice of political system clearly set forth in article 1 of the Covenant. Here again we would like to remind the Committee of its constituted mandates. Viet Nam always welcomes international non-governmental human rights organizations which play a constructive role in the development and protection of human rights in our country and does not welcome those deliberately trying to disseminate false allegations to interfere in our domestic affairs and impose their own ideology.

15. Relating to paragraph 21, it is not correct to say that we are restricting public meetings and demonstrations.

16. As regards paragraphs 22 and 23, in accordance with the rules of procedure, Viet Nam will take appropriate steps to make public all issues relating to the second periodic report. This reply by our Government should be taken as part of our answers to the Committee pursuant to rule 70, (para. 5) of the Committee's rules of procedure.

17. We would request that this communication be included in the annual report of the Committee.